50TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 4141.

DEALING IN FUTURES IN AGRICULTURAL PRODUCTS, ETC.

FEBRUARY 26, 1889.—Referred to the House Calendar and ordered to be printed.

Mr. GLASS, from the Committee on Agriculture, submitted the following

REPORT:

[To accompany bills H. R. 5689 and H. R. 7051.]

The Committee on Agriculture, to whom was referred the bill (H. R. 5689) entitled "A bill to punish dealing in futures in agricultural products," and also "A bill (H. R. 7051) to prohibit fictitious and gambling transactions on the price of articles produced by American farm industry," have considered the same, and ask to report them back, with the recommendation that they do lie upon the table.

The committee are fully aware that the evil sought to be suppressed by Congressional legislation is widespread and disastrous in its consequences to American farmers, and that the practice of dealing in futures or the fictitious buying and selling of the farm products, so extensively carried on by boards of trade and other public exchanges, entail upon the farmers of our country, annually, the loss of many hundreds of thousands of dollars.

These transactions are carried on by speculators—non-producers—regardless of cost of production, the laws of supply and demand, the interest of American producers or consumers, and sell many times over the agricultural products of the land, especially cotton, wheat, pork, lard, butter, and cheese, etc. On a recent Friday it is estimated that over 80,000,000 bushels of wheat alone were sold in six boards of trade. The money of the world, through boards of trade, controls prices through these wicked devices of speculators and gamblers, and the honest farmers are powerless to regulate prices according to the laws of supply and demand.

It has been estimated by experts that the loss to the producers in each of the years of 1885, 1886, and 1887 in the fine articles of wheat, corn, cotton, butter, and cheese amounted to the enormous sum of $469,000,000. The demoralizing effects of these gambling transactions are destructive to public morals, and are felt throughout all the ramifications of business and trade.

These speculators come between the producer and consumer, and by shrewd manipulation they fix the prices for both. With the combined power of united capital they dictate to the producers in detail the market prices of their products, and then in turn they dictate to the consumers the price which they shall pay for the product by virtue of the same power. They break the market by flooding it when the producers would sell, and they force it up by withholding their accumulations from the market after the producers have parted with the great bulk of their crops.

The committee are unanimous in their opinion that all such gambling transactions should be suppressed by law, and that heavy penalties should be inflicted upon persons engaging in the same. But they can

find no grant of power in the constitution for Congressional action. Such transactions are simply contracts, gambling contracts, and as such involving the question of morals; all of which are matters of local State jurisdiction, and are a part of the mass of powers reserved by the States, over which their jurisdiction is ample and exclusive. The police powers of the United States only extending to such matters as pertain to interstate and international transactions, all other police powers belonging exclusively to the States. The dealing in futures is no more nor less than a simple contract, and is not a part of interstate commerce, as it is not commerce at all, but rather an obstruction to commerce. No commodity or other thing of value changes hands, but the difference in the price of the thing fictitiously sold and bought on the day of contract and the day of delivery is adjusted between the parties. So that the grant of power in the Constitution, "To regulate commerce with foreign nations, and among the several States," etc., does not authorize the Congress to exercise jurisdiction over the subject-matter of the two bills.

Benjamin on Sales clearly sets forth and defines such transactions, as contracts, executory contracts, on page 100:

> In relation to things not yet in existence, or not yet belonging to the vender, the law considers them as divided into two classes, one of which may be sold, while the other can only be the subject of an agreement to sell, of an executory contract. Things not yet existing which may be sold are those which are said to have a potential existence, that is, things which are the natural product or expected increase of something already belonging to the vender. A man may sell the crop of hay to be grown on his field, the wool to be clipped from his sheep at a future time, the milk that his cows will yield in the coming month, and the sale is valid.

In relation to executory contracts for the sale of goods not yet belonging to the vender Lord Tenterden held, in an early case at nisi prius, that—

> If goods be sold, to be delivered at a future day, and the seller has not the goods, nor any contract for them, nor any reasonable expectation of receiving them on consignment, but intends to go into the market and buy them, it is not a valid contract, but a mere wager on the price of the commodity.

Again, page 616:

> It has already been shown that a contract for the sale of goods to be delivered at a future day is valid, even though the seller has not the goods nor any other means of getting them than to go into the market and buy them. But such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller and the price to be paid by the buyer. If, under guise of such a contract, the real intent be merely to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager, and is null and void under the statute.

And the courts of this country have again and again adjudicated the same questions, and invariably against the validity of such contracts.

The following are the opinions of the court in the cases given, etc.:

In the City of New York *v.* Miln, Mr. Justice Barbour, in delivering the opinion of the court, uses this language touching the police powers of the State:

> We do not place our opinion upon this ground (that there was no collision between the New York statute and the acts of Congress). We choose rather to plant ourselves on what we consider impregnable positions. They are these: That a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation where that jurisdiction is not surrendered or restrained by the United States. That by virtue of this it is not only the right but the bounden and solemn duty of a State to advance the safety, happiness, and prosperity of its people, and to provide for its general welfare by any and every act of

legislation which it may deem conducive to these ends. Where the power over the particular subject, or the manner of its exercise, is not surrendered or restrained in the manner just stated that all those powers which relate to merely municipal legislation, or what may perhaps more properly be called internal police, are not thus surrendered or restrained, and that consequently in relation to these the authority of a State is complete, unqualified, and exclusive.

In 1842 the State of Louisiana passed a law imposing a tax of $250 on each exchange broker. One Nathan refused to pay this tax upon the ground that his business—

consisted exclusively in negotiating and effecting for others the purchase and sale of exchange on other States or foreign countries.

The case went before the Supreme Court of the United States and is reported in 8 Howard, page 73. The issue was sharply presented under the commerce clause of the Constitution. The postulate was: Congress have the exclusive power to regulate commerce with foreign nations and amongst States. Exchange is a necessary instrument of such commerce. Therefore a State law which imposes a tax on dealers of foreign and interstate exchange is in derogation of the power granted Congress and is null and void. To this Mr. Justice Field in delivering the opinion of the court says:

No! No one can claim an exemption from a general tax on his business within a State on the ground that the products sold may be used in commerce. * * * The Constitution declares that no State shall impair the obligation of contract, and there is no other limitation on State power in regard to contracts. In determining on the nature and effect of a contract we look to the "lex loci" where it was made, or where it was to be performed. And bills of exchange, foreign or domestic, constitute, it would seem, no exception to this rule. * * * Now the Federal Government can no more regulate the commerce of a State than a State can regulate the commerce of the Federal Government; and domestic bills or promissory notes are as necessary to the commerce of a State as foreign bills to the commerce of the Union. And if a tax on an exchange broker, who deals in foreign bills, be a regulation of foreign commerce, or commerce among the States, much more would a State tax upon State paper by Congress be a tax on the commerce of a State.

And the court held that foreign bills of exchange did not come within the power of Congress to regulate commerce with foreign nations and among the States, but remained with the States and under their power.

This same question was again before the Supreme Court of the United States in the case of Paul *vs.* Virginia (8 Wallace, 168).

The State of Virginia passed a statute requiring foreign insurance companies to obtain license and make deposits for the security of policyholders.

It was contended that the statute amounted to a regulation of commerce among the States, in that it prescribes the terms and conditions on which this branch of commerce may be carried on, and makes it penal to prosecute it without compliance with these terms.

Mr. Justice Field was again the spokesman for the court, and in answer said:

No. The defect of the argument lies in the character of the business. * * * These contracts * * * are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different States. The policies do not take effect, are not executed contracts until delivered by the agent in Virginia. They are, then, local transactions, and are governed by the local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York whilst in Virginia would constitute a portion of such commerce.

And contracts were again held not to be within the commerce clause of the Constitution, but to remain under the power of the States and governed by the local law.